IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8821 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEALTH CARE HOSPITAL P. LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 8821 of 2002
MR SUNIT S SHAH for Petitioner No. 1
MS JAYSHRUTI ACHARYA for Petitioner No. 1
DR RAJESH H ACHARYA for Petitioner No. 1
..... for Respondent No. 1
MR TANVISH U BHATT for Respondent No. 2-3

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 22/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

Rule. Service of rule is waived by Mr. Tanvish Bhatt, learned Standing Counsel for the Central Government.

2. This is an application challenging the order dated 26.3.2002 made by the Commissioner of Income-tax, Ahmedabad-II, Ahmedabad under sec. 264 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

3. The brief facts necessary for appreciating the controversy are as under :

4. On 28.3.2000, an order under sec.143(3) of the Act for Assessment Year 1997-98 came to be passed in case of the petitioner, a private limited company. The petitioner found that there were certain errors in the said assessment order and hence preferred an application for rectification under sec. 154 of the Act. On 28.11.2000, the rectification application came to be rejected by the Assessing Officer. The petitioner preferred, on 4.4.2001, revision application under sec. 264 of the Act challenging both the orders, namely, the order under sec.143(3) of the Act and the rectification order under sec. 154 of the Act. There were two grounds of challenge. The first one pertained to credit for tax deducted at source which came to be allowed by the Commissioner in the impugned order. Hence, the said issue does not survive for our consideration.

5. In relation to the second issue, it appears that an addition was made holding that certain credits in the books of accounts of the petitioner company were not proved and, hence, were treated as undisclosed income under sec. 68 of the Act. During course of proceedings under sec. 154 of the Act, it was contended on behalf of the petitioner that the evidences, which were called for, having been produced during original assessment proceedings, were already available on record and further even if the same were not available, the petitioner produced a fresh set of confirmation letters, etc. in those proceedings. The Assessing officer rejected the claim and hence the revision petition.

6. Mr. Sunit Shah, the learned advocate appearing on behalf of the petitioner, submitted that the

petitioner had complied with all the queries raised during course of assessment proceedings and the Assessing Officer and the Commissioner were in error in not granting the relief prayed for. On 6.9.2002, while issuing notice, this court directed the respondent authorities to produce before the court the order sheet pertaining to assessment proceedings for A.Y. 1997-98 of the petitioner assessee. Accordingly, Mr. Tanvish Bhatt, learned Central Government Standing Counsel, appearing on behalf of the respondents, produced the original order sheet along with the entire assessment record for our perusal.

7. The Commissioner, while rejecting the claim of the petitioner in relation to addition under sec. 68 of the Act, has relied upon order sheet entry dated 27.10.1999 over and above the correspondence referred to in the impugned order. Having gone through the order sheet entries and the assessment record, we are prima facie of the view that the Commissioner has committed an error in observing that the necessary details regarding confirmation letters, copy of the contra accounts of the depositors, bank accounts, etc. were not available on record. However, in the view that we are taking, we do not express any final opinion as to veracity of the said documents.

8. The order under sec. 264 of the Act dated 26.3.2002 insofar as it relates to addition under sec. 68 of the Act is quashed and set aside and the proceedings are restored to the file of the Commissioner for deciding on merits. It will be open to the Commissioner to once again go through the entire evidence which is available on record, and after giving an opportunity of hearing to the petitioner, decide the controversy regarding addition under sec. 68 of the Act afresh.

The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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